The Record

The record in this case consists of the original record of proceedings in the district court and a printed appendix filed by petitioner in the court of appeals. The printed appendix contains all of the proceedings and exhibits of the district court.

Prior Proceedings

On August 15, 1962, an indictment was filed in the District Court for the Southern District of New York, bearing Docket Number 62 Cr. 790, in which petitioner Anthony Castaldi was accused, along with 19 co-defendants and 21 other co-conspirators not named as defendants, of conspiracy to violate the Federal Narcotics Laws. This indictment is annexed hereto as Exhibit C, *infra*.

This case, known as *United States* v. *Borelli,* was brought to trial in November, 1963, before District Judge Dudley B. Bonsal and a jury, with 16 of the 20 defendants standing trial. After a six weeks trial the jury convicted eleven defendants and acquitted five. Among those acquitted was Anthony Castaldi.

At the trial of this indictment the sole witness to testify against petitioner was co-conspirator Salvatore Rinaldo. This testimony related to petitioner's alleged participation in the narcotics conspiracy, and concerned Rinaldo's transactions with petitioner and other defendants supposedly taking place in July or August 1955. Rinaldo testified in all concerning ten or eleven defendants. The jury obviously did not believe Rinaldo's testimony against Castaldi since it acquitted Castaldi.

Following petitioner's acquittal in December, 1963, the grand jury proceeding was commencing in February 1964

Parenthetically, the convictions in the *Borelli* case were reversed by the Court of Appeals on July 31, 1964, and a new trial was ordered. This case is reported at 336 F. 2d 376. See also *Cinquegrano* v. *United States,* No. 541, O.T. 1964, and *Mogavero* v. *United States,* No. 546, O.T. 1964, certiorari pending in both cases, defendants in the *Borelli* case.

The Contempt Proceedings

On February 3, 1964, petitioner was served with a grand jury subpoena requiring his appearance on February 13, 1964. He appeared, was sworn, gave his name and address and thereafter he refused to answer any questions, invoking his constitutional privilege against self-incrimination. The material questions put to him related to his acquaintance with persons named in the *Borelli* indictment or others previously convicted of narcotics offenses.

Petitioner made further apperances before the same grand jury on April 23 and May 7, 1964. Both times he invoked his personal privilege against self-incrimination. Thereafter the government took steps to invoke the immunity provisions of the Narcotics Control Act, Title 18, United States Code, § 1406. On May 14, 1964, the assistant United States attorney appeared before District Judge Wilfred Feinberg for an order directing petitioner to testify before the grand jury under a grant of immunity. After a hearing on May 14 and 15, 1964, Judge Feinberg signed an order requiring petitioner to appear before the grand jury, granting him immunity under the statute. At this hearing approximately 70 questions were related to

the court as those put to petitioner which the government wanted answered. These questions related essentially to the charges made against petitioner in the narcotics conspiracy trial.

Thereafter on June 1, 1964, petitioner again appeared before the grand jury and again he refused to answer the questions put to him. On July 2, 1964, petitioner was brought before Judge Wyatt for the invocation of summary contempt procedures under Rule 42(a), F. R. Cr. P. Instead, the contempt proceeding was instituted under Rule 42(b), F. R. Cr. P., as described above.

The questions put to petitioner in substance were concerned with the factual allegations of the indictment and trial in which he was acquitted. The questions were framed as though the charges were true and petitioner was guilty instead of his having been acquitted. For example, petitioner was asked how well he knew many of the co-conspirators and co-defendants, named in the *Borelli* case.

For example, the questions included the following:

> Q. Isn't it a fact, Mr. Castaldi, that Salvatore Rinaldo testified against you in a federal narcotics case in this District?
>
> Q. In the case in which Rinaldi testified against you, it was stated that he'd been introduced to you by Joseph Mogavero and Carmine Locassio. Have you any dealings with Rinaldo involving narcotics?
>
> Q. Do you know Joe Mogavero?
>
> Q. Do you know Carmine Locassio?
>
> Q. Have you ever heard of Locassio or Mogavero?
>
> Q. As a result of the meeting, Rinaldo testified he delivered narcotics for you to a person known as "Johnny."

Q. Who was "Johnny"?

Q. What was the source of your—for those narcotics?

Q. Was your source in this country?

Q. Was your source outside this country?

Q. Do you have more than one source of supply for narcotics?

Q. Do you still have dealings with Johnny with regard to narcotics?

Q. Do you know what Johnny did with the narcotics after you had them delivered to him?

Q. Do you supply narcotics for anybody else?

Q. Have you ever handled narcotics?

Q. How long did you know Joe Mogavero or Carmine Locassio before you met Rinaldo?

Q. How much did you pay Locassio and Mogavero for the narcotics?

Q. Do you know where they obtained the narcotics?

Q. Tell us what percentage of profit you realized from the sale of these narcotics. (App. 106a-107a)

It can easily be seen that the grand jury inquiry was concerned with the facts of the prior case against petitioner and that the principal objective of the inquiry was an attempt to go behind petitioner's acquittal, to attack it collaterally through a contempt proceeding.

Following petitioner's sentence of two years, he was released by the Court of Appeals in bail pending appeal of $20,000.

REASONS FOR GRANTING THE WRIT

This case involves substantial questions of constitutional law concerning criminal contempts of court and questions about the proper administration of federal criminal justice. It is submitted that review by certiorari is warranted herein.

1. Under the factual circumstances of this case it was not constitutionally proper to prosecute and convict petitioner for criminal contempt of court for his refusal to answer questions before a grand jury, as to matters about which he had previously been acquitted, notwithstanding his purported immunity under 18 U.S.C. § 1406. It is clear from the record that these questions related in substantial and material part to the facts and issues of the case wherein petitioner had been acquitted. To put it succinctly, petitioner has a right to be let alone after being acquitted, instead of being continually harassed by the prosecution, as he has been in this case since his acquittal. *Piemonte* v. *United States*, 367 U.S. 556, 561, 564 (dissenting opinion).

Petitioner's acquittal established as a matter of constitutional law that he was not part of the narcotics conspiracy alleged in the *Borelli* case. Accordingly, there was no real occasion to tender him a purported grant of immunity to enable the prosecution to question him about that case. Heretofore this Court has sustained the validity of the immunity provisions. Cf. 18 U.S.C. § 1406 as to one previously convicted of a narcotics violation (*Reina* v. *United States*, 364 U.S. 507; *Piemonte* v. *United States*, 367 U.S. 566), but it has not held that this statute is to be applied to one acquitted of the offense. Nor has this Court held that one *acquitted* of narcotics conspiracy can there-

after be re-examined and re-tried for contempt upon questions which assume the truth of the narcotics conspiracy charge laid against him. The rules of double jeopardy, *res judicata* and collateral estoppel compel an answer that the accused need not answer the questions put to him and that he has the right to be free of further harassment about this matter. *Sealfon* v. *United States,* 332 U.S. 575, 578; *United States* v. *Kramer,* 289 F. 2d 909; *United States* v. *Sabella,* 272 F. 2d 206; *Zdanok* v. *Glidden Company Durkee Famous Foods Division,* 327 F. 2d 944; *Cf. Developments in the Law, Res Judicata,* 65 Harvard Law Review, 818, 874-880 (1952).

The Court of Appeals rejected petitioner's argument on this point with the comment that because "the contempt conviction is not the same offense as the earlier conspiracy proceeding, double jeopardy plays no role here, just as it plays no role in the case of a prior conviction. Similarly, the doctrine of *res judicata* and collateral estoppel both contemplate subsequent litigation involving claims and facts once adjudicated. The only question in the contempt proceeding was whether Castaldi wrongfully refused to obey court orders, not whether he conspired to sell narcotics." (Slip Opinion, p. 157 pp. 17-18 *infra*). This simplistic argument completely overlooks the principal point here, that the contempt proceeding was undertaken solely in connection with the facts of the case in which petitioner had been acquitted and constituted a collateral attack upon the judgment of *autrefois acquit.* The material questions to petitioner show this clearly.

For this reason the order of the District Court granting immunity was wrong as a matter of law, as was the direction to petitioner to answer the questions before the grand

jury. He was entitled to rely upon the judgment of *autrefois acquit* and to remain silent. The immunity provisions of § 1406 were therefore inapplicable to him. Any other rule will do violence to petitioner's rights as an acquitted person, and under the circumstances render the provisions of § 1406 violative of both the double jeopardy and due process clauses of the Fifth Amendment.

Finally, it is unfair to petitioner to require him to undergo the process of numerous grand jury appearances, several court appearances, the cost and inconvenience attached to retaining counsel and printing records and briefs, as well as the stigma and jail term imposed in a contempt conviction, in a situation where he has been acquitted of the underlying charge.

2. Petitioner was constitutionally entitled to an indictment and to a trial by jury for the crime of criminal contempt of court, which, by virtue of the sentence of two years imprisonment constituted a felony. The Fifth Amendment provides that no person shall be held to answer for an "infamous" crime, unless on a grand jury presentment or indictment. The Sixth Amendment states that in all criminal prosecutions the accused shall enjoy the right to a trial by jury. A crime is made "infamous" by the quality of the punishment which may be imposed, *Ex Parte Wilson,* 114 U.S. 417. All felonies are infamous crimes, *Wong Wing* v. *United States,* 163 U.S. 228, 237, for which jury trials are required. 18 U.S.C. § 1(1) classifies as a felony all offenses punishable by death or imprisonment exceeding one year.

Clearly petitioner was convicted of a felony, and accordingly he was entitled to be prosecuted by indictment and trial by jury before the imposition of a felony sentence. See

District of Columbia v. *Clawans*, 300 U.S. 617, 627; *United States* v. *Barnett*, 376 U.S. 681, 685; fn. 12, and dissenting opinions by Mr. Justice Black and Mr. Justice Goldberg.

Now, we are aware that this Court held squarely in the *Barnett* case, *supra*, last term, that an alleged contemnor does not have a constitutional right to a jury trial in a contempt case. However, the imposition of felony sentences in contempt cases may require that all of the safeguards attached to felony trials be afforded to contempt defendants before felony sentences may be imposed.

Title 18, United States Code, § 401 defines criminal contempts. It is to be noted there that no punishment is provided, but rather the power is left to the court "to punish by fine or imprisonment, *at its discretion*" the disobedience or resistance to its lawful order. Unless this statute is constitutionally defective for vagueness, it would seem to vest in the district court (or other court concerned) the power to define crimes by the punishment it imposes. But we cannot believe that Congress intended to vest in the courts the power to define crimes by the sentences it imposes, and at the same time to strip constitutional rights from defendants in criminal contempt cases by authorizing the imposition of felony sentences.

In other words, the discretion vested in the court concerned is limited by the constitutional provisions relating to prosecutions of felonies by indictment and trial by jury. It is to be remembered that in § 1 of Title 18, the classification of crimes is preceded by this significant statement:

> "Notwithstanding any Act of Congress to the contrary:"

This means what it says. If you sentence a person to imprisonment for more than one year *it is a felony,* no matter what else you may call it.

Accordingly, unless petitioner received an illegal or impermissible sentence, he was improperly tried and sentenced for a felony without affording him his constitutional rights to an indictment and jury trial.

3. Under the circumstances of this case, and the developing law on this subject, the two years sentence of imprisonment imposed against petitioner is in violation of his constitutional rights. The "dramatic increase in recent years in the severity of the punishment imposed in the federal courts without trial by jury for criminal contempt" (Goldberg, J., dissenting in *Barnett, supra*) requires that this Court exercise its supervisory function over the administration of federal criminal justice to put a stop to those blatantly unconstitutional sentences.

The analysis of the law concerning the imposition of felony sentences in contempt cases without felony trial safeguards, as discussed in point 2 above, makes it clear that unless all felony contempt cases be treated as falling within the constitutional requirements for felony trials, the limits of contempt sentences will necessarily have to be that set forth for petty or trivial offenses.

In the pending case of *Harris* v. *United States* (No. 526, O.T. 1964), the Solicitor General acquiesced in the grant of certiorari on the question of permissible sentences in contempt cases. The issues as to permissible sentences is nearly identical in this case, except that here petitioner received a two years sentence while in *Harris* the sentence

was one year. On December 14, 1964, the Court granted certiorari in the *Harris* case limited to questions 2, 3 and 4 as presented by petitioner there.

On the question of permissible sentences and this Court's opinion in *Barnett*, the Court of Appeals distinguished the power of the District Court to impose harsh sentences both in this case and the *Harris* case from the *Barnett* case by stating that "the contempt in *Barnett* was not committed in the presence of the Court and the contempt proceeding took place after compliance with the Court order. Here, as in *Harris*, the comtempt was committed in the Court's presence and the proceeding preceded compliance"[1] (Slip Opinion, p. 159, p. 19, *infra*). We submit that such distinctions are artificial and do not reach the essential issue of the permissibility under constitutional standards of maximum punishments in contempt cases.

Moreover, the Court of Appeals cited the case of *Rollerson* v. *United States*, 33 USLW 2173, 2174, as conflicting with the rule it was declaring in both this and the *Harris* case as to maximum permissible punishments in contempts committed in the presence of the Court. It would thus appear that there is a conflict of decision between the Second and District of Columbia Circuits on this important question, and this conflict should be resolved by this Court.

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[1] The Court of Appeals did point out in its opinion that the proceeding in this case was under Rule 42(b), F. R. Cr. P., while in *Harris* the proceeding was a summary proceeding under Rule 42(a). The Court then stated that a 42(a) proceeding would have been proper here. However, the contempt proceeding in this case was for failure to testify before the Grand Jury, and was not a contempt before the Court. Thus the Court's opinion as granted herein, was in error on this point.

In view of the grant of certiorari in the *Harris* case and the conflict of decision in the circuits between this case and the *Rollerson* case, certiorari should be granted here for a full review of this case on the merits.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be granted and this case ordered briefed and argued along with the *Harris* case, *supra*.

Respectfully submitted,

DANIEL H. GREENBERG
Attorney for Petitioner

December 15, 1964

APPENDIX A

Opinion of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 137—September Term, 1964.

(Argued September 25, 1964 Decided November 17, 1964.)

Docket No. 29043

UNITED STATES OF AMERICA,

Appellee,

—v.—

ANTHONY CASTALDI,

Appellant.

Before:

LUMBARD, *Chief Judge,*
MOORE and SMITH, *Circuit Judges.*

Appeal from a judgment of conviction for contempt of court entered in the United States District Court for the Southern District of New York, Inzer B. Wyatt, *J.*, sitting without a jury.

Affirmed.

ROBERT M. MORGENTHAU, United States Attorney (Andrew M. Lawler, Jr., John A. Sprizzo, Assistant United States Attorneys, of counsel), *for appellee:*

DANIEL H. GREENBERG, New York, New York (Samuel W. Altman, Marvin Margolis, of counsel), *for appellant.*

MOORE, *Circuit Judge*:

Anthony Castaldi appeals from a judgment convicting him of criminal contempt of court. The conviction was based on his refusal to answer questions put to him before a Grand Jury in the Southern District of New York and before a District Judge on the ground that he might incriminate himself.

Castaldi had been indicted along with a score of co-defendants and co-conspirators for conspiring to violate the federal narcotics laws. After a trial in 1963 he was one of five acquitted, eleven others being convicted.[1] In February 1964 Castaldi was subpoenaed to testify before a federal grand jury investigating illicit narcotics traffic. At hearings in February, April and May 1964 he refused to answer all questions, some of which related to aspects of the conspiracy. On May 15th, at the Government's request, Castaldi was granted immunity from future prosecution and ordered to answer, under 18 U. S. C. A. §1406. On July 1st, his next appearance before the Grand Jury, and on July 2nd, before Judge Wyatt, he again refused to answer all questions. On notice and hearing as provided in Rule 42(b), Fed. R. Crim. P., Judge Wyatt found Castaldi guilty of disobedience of the Court's orders requiring him to answer the questions put to him before the

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[1] The convictions were later reversed and a new trial ordered. *United States* v. *Borelli*, 336 F. 2d 376 (2d Cir. 1964).

Grand Jury. Judge Wyatt sentenced him to two years' imprisonment or until further order of the Court, should he answer the questions before the end of the sentence or the discharge of the Grand Jury. Castaldi's request for a jury trial was denied.

Castaldi now contends that: (1) the prior acquittal operates to bar a contempt conviction based on a refusal to answer questions concerning in part the subject matter of the earlier proceeding; (2) he was constitutionally entitled to an indictment and trial by jury; and (3) the two-year sentence is constitutionally impermissible. We reject all three contentions.

The conspiracy acquittal, Castaldi argues, should bar his contempt conviction under principles of double jeopardy, *res judicata* and collateral estoppel. However, the acquittal in no way gave Castaldi permanent freedom to refuse to answer all questions relating to possible narcotics violations merely because they might have some connection with an earlier trial. Indeed, the Supreme Court held in both *Reina* v. *United States*, 364 U. S. 507 (1960) and *Piemonte* v. *United States*, 367 U. S. 556 (1961), that a prior conviction did not create a right to refuse to answer questions relating to the underlying crime. " 'The public has a right to every man's evidence.' " *Piemonte, supra*, at 559 n. 2. If three persons witness an offense—an innocent bystander, a suspect who is convicted, and a suspect who is acquitted—the acquitted suspect has no more right to keep silent than do the other two. See *Piemonte, ibid.* Because the contempt conviction is not the same offense as in the earlier conspiracy proceeding, double jeopardy plays no role here, just as it plays no role in the case of a prior conviction.

Similarly, the doctrines of *res judicata* and collateral estoppel both contemplate subsequent litigation involving claims and facts already once adjudicated. The only question in the contempt proceeding was whether Castaldi wrongly refused to obey court orders; not whether he conspired to sell narcotics.

Castaldi is not being retried. Nor does his acquittal establish as a matter of law his lack of knowledge concerning narcotics traffic as he claims. All that the Government was required to show was that it had complied with the statute. This it has done. See *Ullman* v. *United States*, 350 U. S. 422, 434 (1956) dealing with a similar statute, 18 U. S. C. A. §3486, 68 Stat. 745.

Castaldi next claims that he was entitled to an indictment and jury trial under the Fifth and Sixth Amendments to the Constitution. His arguments on these points involve constructions of the statutes which classify federal offenses and define criminal contempt (18 U. S. C. A. §§1 and 401). Briefly, he argues that the punishment for criminal contempt is in the court's discretion and might possibly exceed one year, that sentencing for more than one year makes an offense a felony, that a felony is an "infamous" crime, and that, therefore, there should have been an indictment and jury trial. This argument was made and rejected in *United States* v. *Green*, 356 U. S. 165 (1958), which upheld a three-year sentence. That principle was recently reaffirmed in *United States* v. *Barnett*, 376 U. S. 681, 692 (1964), which again ruled against a constitutional right to a jury trial in a criminal contempt case.

Castaldi does not have a statutory right to a jury trial. Congress has provided for a jury trial in only certain criminal contempt proceedings. See, e.g., 18 U. S. C. A. §§402, 3691, 3692; Civil Rights Act of 1964, §1101, 78 Stat. 267. But under all of these statutes no right to a jury trial exists with respect to contempts committed in the presence of the court. And that is what Castaldi is convicted of.

Lastly, we come to the claim that the penalty which may be imposed is limited to that for petty offenses, because of the absence of a jury trial. Castaldi cites footnote 12 in *United States* v. *Barnett,* 376 U. S. at 694-95, in which the Court added a "dictum" that "Some members of the Court are of the view that, without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that provided for petty offenses." But as we noted in *United States* v. *Harris,* 334 F. 2d 463 (2d Cir.), *petition for cert. filed,* 33 U. S. L. Week 3101, Sept. 22, 1964 (No. 526), the contempt in *Barnett* was not committed in the presence of the court and the contempt proceeding took place after compliance with the court order. Here, as in *Harris,* the contempt was committed in the court's presence and the proceeding preceded compliance. But cf. *Rollerson* v. *United States,* No. 17675, D. C. Cir., Oct. 1, 1964.

Moreover, the sentence has a purge clause by which Castaldi "carries the keys to freedom in his willingness to comply with the court's directive . . . " *United States* v. *Barnett,* 376 U. S. at 727 n. 6 (dissenting opinion of Black, *J.*), *id.* at 754 (dissenting opinion of Goldberg, *J.*). Sentences

similar to this were upheld in *United States* v. *Reina, supra; United States* v. *Testa,* 334 F. 2d 746 (3d Cir.), *cert denied,* 33 U. S. L. Week 3129 (U. S. Oct. 12, 1964); see *United States* v. *Rinieri,* 308 F. 2d 24 (2d Cir.), *cert. denied,* 371 U. S. 935 (1962).

Castaldi's attempt to distinguish *Harris* as arising under Rule 42(a), Fed. R. Crim. P., for summary contempts, whereas this case arose under Rule 42(b) for disposition on notice and hearing, is without merit. His refusal to answer was made in the presence of the court and would have justified a proceeding under Rule 42(a). If the sentence would be permissible then under *Harris,* it can hardly be made impermissible by the fact that the court chose to proceed under Rule 42(b), by which other additional protections were afforded.

The judgment appealed from is affirmed.

APPENDIX B

Constitutional Provisions, Statutes and Rule Involved

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . .

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: . . .

TITLE 18, UNITED STATES CODE (1958 ed.)

§ 1. OFFENSES CLASSIFIED

Notwithstanding an Act of Congress to the contrary:

(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

(2) Any other offense is a misdemeanor.

(3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense.

Appendix B—Constitutional Provisions, Statutes and Rule Involved

§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

§ 1406. Immunity of witnesses

Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h) or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a), is necessary to the public interest, he, upon the approval of the Attorney General, shall make application

to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

Federal Rules of Criminal Procedure

Rule 42. CRIMINAL CONTEMPT

* * * * *

(b) *Disposition Upon Notice and Hearing.* A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and de-

scribe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

APPENDIX C

Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

62 Cr. 790

Filed, August 15, 1962

UNITED STATES OF AMERICA,

—v.—

FRANK BORELLI, ANGELO BUIA, ANTHONY CASTALDI, ANTHONY CICCONE, BENEDETTO CINQUEGRANO, ALBERT DI STEFANO, ALFRED EPPOLITO, THOMAS GARIBALDI, CARMINE LOCASCIO, ANGELO LOIACANO, JOSEPH MOGAVERO, ROSARIO MOGAVERO, VINCENT RENNA, GUISEPPE A. RUFFINO, MIKE SEDOTTO, ANTHONY SETTECASE, DAVID "Pop" SMITH, ROCCO SANCINELLA, HARRY TANTILLO and JOHN DOE, a/k/a MICKEY BLAIR, meaning thereby to describe a white male, approximately 51 years of age, 5'9", with greying black hair and dark complexion,

Defendants.

The Grand Jury charges:

1. From in or about January of 1950 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, FRANK BORELLI, ANGELO BUIA, ANTHONY CASTALDI, ANTHONY CICCONE, BENEDETTO CINQUEGRANO, ALBERT DI STEFANO, ALFRED EPPOLITO, THOMAS GARIBALDI, CARMINE LOCASCIO, ANGELO LOIACANO, JOSEPH MOGAVERO, ROSARIO MOGAVERO, VINCENT RENNA, GUISEPPE A. RUFFINO, MIKE SEDOTTO, AN-

THONY SETTECASE, DAVID "POP" SMITH, ROCCO SANCINELLA, HARRY TANTILLO and JOHN DOE, a/k/a MICKEY BLAIR, meaning thereby to describe a white male, approximately 51 years of age, 5'9", with greying black hair and dark complexion, named as defendants herein and Joseph Baione, Charles Campisi, Ugo Caneba, Salvatore Caneba, Jake Ciraulo, Charles Curcio, Charles Di Palermo, Sam Kass, Daniel Lessa, Gennaro Mancuso, Rocco Mazzie, Vincent Mazzie, Michael Monica, James Piccarelli, Richard Roe, a/k/a "Pete" meaning thereby to describe a white male, approximately 43 years of age, 5'6" weighing 150 lbs., with dark complexion, Jack Scarpulla, Salvatore Rinaldo, Guiseppe Ruffino, Joseph Seirra, Vincent Squillante, Joseph Valachi, named as co-conspirators but not as defendants herein, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with divers other persons to the Grand Jury unknown to violate Sections 173 and 174 of Title 21, United States Code.

2. It was a part of said conspiracy that the said defendants and co-conspirators would unlawfully, fraudulently, wilfully and knowingly import and bring large amounts of narcotic drugs into the United States from and through Italy and other countries to the Grand Jury unknown.

3. It was further a part of said conspiracy that the said defendants and co-conspirators would unlawfully, fraudulently, wilfully and knowingly receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large amounts of narcotic drugs after said narcotic drugs

were imported and brought into the United States, knowing that the said narcotic drugs were imported and brought into the United States contrary to law.

4. It was further a part of said conspiracy that said defendants and co-conspirators would dilute, mix and adulterate said narcotic drugs prior to their distribution throughout the United States.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, within the Southern District of New York and elsewhere, the defendants committed the following overt acts, among others:

1. In or about March of 1951 in the Southern District of New York the defendants HARRY TANTILLO and CARMINE LOCASCIO had a conversation in the Black Horse Inn on Market Street, New York, New York.

2. In or about May of 1951, in the Southern District of New York, the defendants, FRANK BORELLI, CARMINE LOCASCIO and co-conspirator Charles Curcio, had a conversation in the vicinity of 112th Street and Broadway, New York, New York.

3. In or about October of 1951, in the Southern District of New York, the defendants, BENEDETTO CINQUEGRANO and ROSARIO MOGAVERO had a conversation in the Black Horse Inn on Market Street, New York, New York.

4. In or about March of 1954, in the City of Flemington, District of New Jersey, the defendant ALBERT DI STEFANO, had a trunk in his possession.

5. In or about July of 1954, in the Southern District of New York, the defendants, JOSEPH MOGAVERO, CARMINE LOCASCIO and ANTHONY CASTALDI, had a conversation at the Howard Johnson Restaurant on Bruckner Boulevard near the Hutchison River Parkway, Bronx, New York.

6. In or about August of 1954, in the Southern District of New York, the defendants ANGELO BUIA and DAVID "Pop" SMITH had a conversation on 34th Street and First Avenue in New York, New York.

7. In or about August of 1954, in the Southern District of New York, the defendants, CARMINE LOCASCIO, ANTHONY CICCONE and ANTHONY CASTALDI, made a test in the vicinity of Second Avenue and 106th Street, New York, New York.

8. In or about May of 1955, the defendant GUISEPPE A. RUFFINO arrived in New York, New York, in the Southern District of New York from Italy.

9. In or about August of 1955, in the Southern District of New York, the defendants DAVID "Pop" SMITH, CARMINE LOCASCIO and JOSEPH MOGAVERO had a conversation at Walsh's Steak House at 24th Street and First Avenue, New York, New York.

10. In or about August 1955, the defendant VINCENT RENNA arrived in New York, New York, in the Southern District of New York, from Italy.

11. In or about August of 1955, the defendant, ANTHONY SETTACASE, had a trunk in his possession in Marlboro, New York.

12. In or about December of 1955, in the Southern District of New York, the defendant MIKE SEDOTTO, received a package in the vicinity of Bruckner Boulevard and Tremont Avenue, Bronx, New York.

13. In or about December of 1957, the defendants, Rocco SANCINELLA, JOSEPH MOGAVERO and ANGELO LOICANO, had a conversation at the Anchor Bar, 1469 Second Avenue, New York, New York, in the Southern District of New York.

14. In or about July of 1958, in the Southern District of New York, the defendant, ALFRED EPPOLITO, received $35,000 on Market Street, New York, New York.

15. In or about July of 1958, in the Eastern District of New York, the defendant, THOMAS GARIBALDI, had a package on his person in Astoria, Queens, New York.

16. In or about December of 1958, in the Southern District of New York, the defendant, JOHN DOE a/k/a MICKEY BLAIR, meaning thereby to describe a white male, approximately 51 years of age, 5'9", with greying black hair and dark complexion, had a package on his person in the vicinity of 180th Street and Broadway, New York, New York.

ROBERT M. MORGENTHAU
United States Attorney

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Foreman